

THE HONORABLE MARSHA J. PECHMAN

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ADEL HASSAN HAMAD

Plaintiff,

v.

ROBERT M. GATES, in his individual
capacity; DONALD RUMSFELD, in his
individual capacity; PAUL WOLFOWITZ, in
his individual capacity; GORDON
ENGLAND, in his individual capacity;
James M. McGARRAH, in his individual
capacity; RICHARD B. MYERS, in his
individual capacity; PETER PACE, in his
individual capacity; MICHAEL GLENN
"MIKE" MULLEN, in his individual capacity;
JAMES T. HILL, in his individual capacity;
BANTZ CRADDOCK, in his individual
capacity; GEOFFREY D. MILLER, in his
individual capacity; JAY HOOD, in his
individual capacity; HARRY B. HARRIS,
Jr., in his individual capacity; MARK H.
BUZBY, in his individual capacity;
ADOLPH MCQUEEN, in his individual
capacity; NELSON CANNON, in his
individual capacity; MICHAEL
BUMGARNER, in his individual capacity;
WADE DENNIS, in his individual capacity;
BRUCE VARGO, in his individual capacity;
ESTEBAN RODRIGUEZ, in his individual
capacity; DANIEL MCNEILL, in his
individual capacity; GREGORY J. IHDE, in
his individual capacity; JOHN DOE 1, in
his individual capacity; JOHN DOE 2, in

Civil Action No.

PLAINTIFF'S **SECOND AMENDED
COMPLAINT** FOR DAMAGES FOR
FORCED DISAPPEARANCE;
PROLONGED ARBITRARY
DETENTION; CRUEL, INHUMAN, OR
DEGRADING TREATMENT;
TORTURE; WAR CRIMES FOR
TARGETING A CIVILIAN; AND FOR
VIOLATION OF DUE PROCESS, ALL
IN VIOLATION OF THE LAW OF
NATIONS PURSUANT TO THE
ALIEN TORT STATUTE AND
VIOLATION OF THE FIFTH
AMENDMENT OF THE UNITED
STATES CONSTITUTION (BIVENS
CLAIM)

JURY DEMAND

THE HONORABLE MARSHA J. PECHMAN

his individual capacity; JOHN DOES 3-
100, in their individual capacities,
Defendants.

COMPLAINT

Plaintiff Adel Hassan Hamad ("Mr. Hamad"), by and through his counsel,
respectfully alleges the following:

I. PRELIMINARY STATEMENT

1. Plaintiff brings this action on behalf of himself.
2. Mr. Hamad is a fifty-two-year-old native, citizen, and current resident of the Sudan. The United States military released him from Guantanamo Bay and allowed him to return home to the Sudan in December of 2007, nearly five and one-half years after unlawfully seizing him from his home in Pakistan in 2002, and two years after determining he posed no threat to the United States.
3. Mr. Hamad has never engaged in terrorism, acts supporting terrorism, or violence against the United States or its citizens. He did not commit any belligerent act, and did not support hostilities in aid of enemy armed forces.
4. Even though he was a civilian and an innocent humanitarian aid worker, he was unlawfully seized from his apartment in Pakistan in July of 2002, upon information and belief, at the direction of an American official. After being unlawfully held in Pakistan and at the United States Bagram Air Base in Bagram, Afghanistan ("Bagram" or sometimes referred to as "Baghrum") where U.S. citizens subjected him to torture and cruel, inhuman, and degrading treatment, Mr. Hamad

THE HONORABLE MARSHA J. PECHMAN

1 was transferred to United States Guantánamo Bay Naval Base (“Guantánamo”) in
2 Guantánamo Bay, Cuba, in March 2003. U.S. officials unlawfully held him there
3 until December 2007. During the time at Guantánamo, U.S. officials subjected him
4 to torture and to cruel, inhuman, and degrading treatment. All of these acts were
5 done at the direction of, or by, American citizens affiliated with the United States
6 government or military.

7 5. Defendants were acting outside the scope of their authority when they
8 committed, directed, ordered, confirmed, ratified, had command responsibility for,
9 aided and abetted, conspired to, encouraged, or condoned directly or indirectly all
10 such acts which violated customary international law and Common Article III of the
11 Geneva Conventions, as well as acts outside of those allowed in the Army Field
12 Manual.

13 6. In addition, upon information and belief, Defendants were acting outside the
14 scope of their authority and/or employment when they engaged in all those acts
15 described herein against civilians they knew, or should have known, were innocent
16 of engaging in terrorism, acts supporting terrorism, violence against the United
17 States or its citizen, committing any belligerent act against, or supporting hostilities
18 in aid of enemy armed forces (hereinafter “innocent”). Upon information and belief,
19 the scope of Defendants’ authority, *at most*, was limited to engaging in said acts
20 against those for whom a reasonable basis existed had engaged in terrorism, acts
21 supporting terrorism, violence or belligerent acts against the United States or its
22 citizen, or had supported hostilities in aid of enemy armed forces. Upon information

THE HONORABLE MARSHA J. PECHMAN

1 and belief, Defendants' scope of authority did not extend to engaging in such acts
2 against those who they knew, or should have known through sufficient due process,
3 were innocent.

4 7. Certain officials within the U.S. government, including all Defendants, knew or
5 should have known that many of the men seized and held at Guantánamo Bay and
6 Bagram were innocent. This lawsuit alleges that Mr. Hamad was one of these
7 innocent men.

8 8. Col. Lawrence B. Wilkerson (Ret.), a former high-level official with the United
9 States government has alleged, through a declaration in Plaintiff's counsel's
10 possession, that he has personal knowledge that certain United States officials,
11 including Defendant Rumsfeld, knew that they had seized and were holding
12 innocent men at Guantánamo Bay, and that they simply refused to release them out
13 of fear of political repercussions. The declaration also alleges that there was no
14 meaningful way to determine who was an enemy combatant and who was not, both
15 in the field and at Guantánamo Bay. Defendants knew or should have known of
16 this deficiency.

17 9. Mr. Hamad is married with five living children and two deceased children. The
18 illegal actions against Mr. Hamad resulted in loss of income to his wife and children,
19 leaving them destitute. One of his daughters was born shortly after Mr. Hamad was
20 seized, and died while Mr. Hamad was held at Guantánamo because the family
21 could not afford proper medical care while he was detained and unable to work.
22 Because of Mr. Hamad's detention in Guantánamo, he was never able to help, see,

THE HONORABLE MARSHA J. PECHMAN

1 hold, or provide for his daughter.

2 10. Mr. Hamad was never properly charged nor tried for any criminal act.

3 11. In total, Mr. Hamad was detained for approximately five and one-half years.

4 Mr. Hamad was under the exclusive control of the Defendants and other officials of
5 the United States at Bagram and Guantánamo for all but six months of that time.

6 During those six months, he was detained without charge in a Pakistani prison near
7 Islamabad by, or with assistance of, American officials who, upon information and
8 belief, were acting outside the scope of their authority.

9 12. Mr. Hamad was not given notice of the basis for his detention until more than
10 two years after first being detained, when a Combatant Status Review Tribunal
11 (CSRT) was convened in November 2004. Not until March 2005, nearly three full
12 years after initially being detained, was Mr. Hamad officially labeled an “enemy
13 combatant” by the flawed CSRT process. However, this determination drew a rare
14 dissenting opinion that acknowledged his enemy combatant status determination
15 was unwarranted and as such, would have “unconscionable results.” The basis for
16 Mr. Hamad’s enemy combatant determination was simply because of his
17 association as an employee of two organizations for whom he had done
18 humanitarian and charity work (one of which he had left years before), and nothing
19 more.

20 13. In fact, a second CSRT was ordered for Mr. Hamad in November of 2007, one
21 month before he was ultimately released to the Sudan. This was unusual, and
22 indicates that the government recognized that the initial CSRT determination of Mr.

THE HONORABLE MARSHA J. PECHMAN

1 Hamad was not accurate.

2 14. Flaws in the CSRT process include the following: (1) detainees are afforded
3 inadequate due process, (2) detainees are presumed guilty of being enemy
4 combatants, (3) detainees are not permitted to review classified evidence that is
5 used to justify an enemy combatant determination, (4) detainees are not afforded
6 access to counsel, and (5) detainees are not permitted to present their own
7 witnesses or evidence.

8 15. In March of 2007, Mr. Hamad's habeas counsel, Federal Public Defender
9 Steven Wax, was notified via electronic mail that Mr. Hamad was eligible for
10 transfer back home to the Sudan. However, the United States military had actually
11 cleared Mr. Hamad for return home to the Sudan on November 15, 2005, nearly a
12 year and a half before habeas counsel and Plaintiff were notified. A heavily
13 censored copy of this clearance decision confirms the decision to clear Mr. Hamad
14 for return home was made immediately after the Administrative Review Board, a
15 board that is supposed to annually review the detention of those individuals U.S.
16 officials are holding at Guantanamo Bay, reviewed his case.

17 16. Despite the email notification, U.S. officials (including some of the defendants)
18 acting upon information and belief outside the scope of their authority, continued to
19 unlawfully detained Mr. Hamad. They did not allow him to return to the Sudan until
20 approximately December 12, 2007, following negotiations between officials of the
21 United States and Sudanese governments.

22 17. Plaintiff seeks compensation for his unlawful forced disappearance; prolonged

THE HONORABLE MARSHA J. PECHMAN

1 arbitrary detention; inhuman, degrading and cruel treatment; torture; being targeted
 2 during time of war as a civilian; and due process violations, all of which Plaintiff
 3 suffered while under and relating to the custody of certain United States officials at
 4 Bagram and Guantánamo, and to hold responsible those officials charged with the
 5 unwarranted treatment, detention, and custody of Plaintiff.

6 18. Plaintiff brings this action for compensatory and punitive damages against
 7 Defendants Gates, Rumsfeld, Wolfowitz, England, McGarrah, Myers, Pace, Mullen,
 8 Hill, Craddock, Miller, Hood, Harris, Buzby, McQueen, Cannon, Bumgarner, Dennis,
 9 Vargo, Rodriguez, McNeill, Ihde, Doe 1, Doe 2, and Does 3-100 for their roles in the
 10 harms committed against Plaintiff in violation of domestic and international law.
 11 Defendants exercised command responsibility over, conspired with, aided and
 12 abetted subordinates, and/or directly or indirectly participated in the commission of
 13 abusive and illegal practices alleged herein, including prolonged arbitrary detention,
 14 cruel, inhuman, or degrading treatment, due process violations, and torture of Mr.
 15 Hamad at Bagram and Guantánamo. Plaintiff also brings this action against Does
 16 1-100, who exercised command responsibility over, conspired with, aided and
 17 abetted subordinates, and/or directly or indirectly participated in the harms against
 18 Mr. Hamad. Accordingly, Defendants are liable under domestic and international
 19 law for the injuries, pain, and suffering of Plaintiff in their individual capacities.

20 **II. JURISDICTION AND VENUE**

21 19. This Court has jurisdiction over Plaintiff's claims under 28 U.S.C. § 1331
 22 (federal question jurisdiction) and 28 U.S.C. § 1350 (Alien Tort Statute). As an

THE HONORABLE MARSHA J. PECHMAN

1 alternative to federal question jurisdiction, this Court also has jurisdiction under 28
2 U.S.C. § 1332 (diversity jurisdiction) because the claims for violation of the law of
3 nations can also be brought as state common law claims.

4 20. The Military Commissions Act (MCA) jurisdiction stripping provision, Section 7,
5 which amends 28 U.S.C. § 2241, does not prevent this Court from exercising
6 jurisdiction, for reasons including, but not limited to:

- 7 a. The Supreme Court in *Boumediene v. Bush*, 128 S. Ct. 2229 (2008),
8 invalidated § 7 in its entirety;
- 9 b. Even if U.S.C. § 2241(e)(2) survived *Boumediene*, the provision is
10 unconstitutional on other grounds;
- 11 c. The provision is an unconstitutional bill of attainder;
- 12 d. The provision is not applicable to Mr. Hamad because, *inter alia*, he was
not properly determined to be an enemy combatant.

13 21. This action is brought pursuant to violations of the law of nations under the
14 Alien Tort Statute and also brought directly under the Fifth Amendment to the
15 United States Constitution. As an alternative, the claims for violation of the law of
16 nations may also be brought under state common law.

17 22. Venue is proper in the United States District Court of Western Washington
18 pursuant to 28 U.S.C. § 1391(b)(3) as Defendant Robert M. Gates is domiciled
19 there.

20 **III. PARTIES**

21 23. Adel Hassan Hamad, a fifty-two-year-old native, citizen, and current resident of
22 the Sudan, is married with five living children, one deceased son and one deceased

THE HONORABLE MARSHA J. PECHMAN

1 daughter. Mr. Hamad was unlawfully taken without probable cause, upon
2 information and belief, at the direction of an unknown American official on July 18,
3 2002. He was held as a prisoner under the exclusive control of the United States at
4 Bagram from approximately January 2003 until being transferred on approximately
5 March 15, 2003 to Guantánamo, where his illegal detention continued until he was
6 transferred to the Sudan on approximately December 12, 2007.

Defendants

8 24. Defendant Robert M. Gates is a United States citizen domiciled in Washington
9 State. Defendant Gates owns property in Washington State, including residences,
10 has publicly acknowledged intentions to return to Washington State after
11 employment with the United States government, and upon information and belief,
12 has at various times resided in Washington State. Defendant Gates was the United
13 States Secretary of Defense from December 18, 2006, until July 1, 2011, including
14 the period of time in which some of the events herein described occurred. As the
15 Secretary of Defense, Defendant Gates held the highest rank in the military
16 command structure, other than the President of the United States. At all relevant
17 times, Defendant Gates also held the highest position in the Department of
18 Defense, and in this capacity possessed and exercised command and control over
19 the United States military and the United States detention facility at Guantánamo.
20 At all relevant times, Defendant Gates was in charge of all military forces, and he
21 was responsible for overseeing detainee detention and interrogation, a large part of
22 military intelligence acquisition. Therefore, he was ultimately in charge of Plaintiff's

THE HONORABLE MARSHA J. PECHMAN

1 continued unlawful detention and illegal treatment.

2 25. Pursuant to 10 U.S.C. § 113, the Secretary of Defense has authority, direction
3 and control over the Department of Defense. The Secretary of Defense by statute
4 also exercises "authority, direction and control" over the three Secretaries of the
5 military departments (Secretary of the Army, Secretary of the Navy, and Secretary
6 of the Air Force), the Chairman of the Joint Chiefs of Staff, the other members of
7 the Joint Chiefs of Staff (Vice Chairman of the Joint Chiefs of Staff, Army Chief of
8 Staff, Commandant of the Marine Corps, Chief of Naval Operations, and Air Force
9 Chief of Staff), the Combatant Commanders of the Unified Combatant Commands,
10 the Directors of the Defense Agencies (for example the Director of the National
11 Security Agency) and of the United States Department of Defense Field Activities.
12 The Secretary is authorized to act as convening authority in the military justice
13 system. Moreover, the section provides that the Secretary of Defense, with the
14 approval of the President and after consultation with the Chairman of the Joint
15 Chiefs of Staff, shall provide to the Chairman written policy guidance for the
16 preparation and review of contingency plans, including plans for providing support
17 to civil authorities in an incident of national significance or a catastrophic incident,
18 for homeland defense, and for military support to civil authorities. Such guidance is
19 required to be provided every two years or more frequently as needed and shall
20 include guidance on the specific force levels and specific supporting resource levels
21 projected to be available for the period of time for which such plans are to be
22 effective.

THE HONORABLE MARSHA J. PECHMAN

1 26. Plaintiff sues Defendant Gates in his individual capacity for ordering,
2 authorizing, condoning, creating methods and procedures for, exercising command
3 responsibility over, conspiring with, aiding and abetting subordinates, and/or directly
4 or indirectly participating in the abuses of Plaintiff as hereinafter alleged. He is
5 sued in his individual capacity, because it is alleged that in engaging in the conduct
6 for which Plaintiff sues him, Defendant Gates was, upon information and belief,
7 acting outside the scope of his authority – the scope of his authority, *at most*, being
8 limited to engaging in said acts against those for whom a reasonable basis existed
9 had engaged in terrorism, acts supporting terrorism, violence or belligerent acts
10 against the United States or its citizen, or had supported hostilities in aid of enemy
11 armed forces. In addition, Defendant Gates was acting outside the scope of his
12 authority for all acts that violated customary international law and Article III of the
13 Geneva Conventions.

14 27. Defendant Donald H. Rumsfeld is a United States citizen residing in Illinois.
15 Defendant Rumsfeld was the United States Secretary of Defense from January 20,
16 2001 until December 18, 2006, including the period of time in which the events
17 herein described began. As the Secretary of Defense, Defendant Rumsfeld held
18 the highest rank in the military command structure, other than the President of the
19 United States. At all relevant times, Defendant Rumsfeld held the highest position
20 in the Department of Defense, and in this capacity possessed and exercised
21 command and control over the United States military and the United States
22 detention facility at Guantánamo. At all relevant times, Defendant Rumsfeld was in

THE HONORABLE MARSHA J. PECHMAN

1 charge of all military forces, and he was responsible for overseeing detainee
2 interrogation, a large part of military intelligence acquisition. Therefore, he was
3 ultimately in charge of Plaintiff's continued unlawful detention and illegal treatment.
4 Defendant Rumsfeld is sued in his individual capacity for ordering, authorizing,
5 condoning, creating methods and procedures for, exercising command
6 responsibility over, conspiring with, aiding and abetting subordinates, and/or
7 directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged. In
8 committing the illegal acts alleged herein, Defendant Rumsfeld, upon information
9 and belief, was acting outside the scope of his authority - the scope of his
10 authority, *at most*, being limited to engaging in said acts against those for whom a
11 reasonable basis existed had engaged in terrorism, acts supporting terrorism,
12 violence or belligerent acts against the United States or its citizen, or had
13 supported hostilities in aid of enemy armed forces. In addition, Defendant
14 Rumsfeld was acting outside the scope of his authority for all acts that violated
15 customary international law and Article III of the Geneva Conventions.

16 28. Defendant Paul Wolfowitz is a United States citizen residing in Maryland.
17 Defendant Wolfowitz was Deputy Secretary of Defense from March 2, 2001 until
18 March 17, 2005, including the period of time in which events herein described
19 occurred. In particular, Mr. Wolfowitz was responsible for creating and overseeing
20 the implementation of the flawed CSRTs, through memoranda which called for
21 specific treatment of detainees. Defendant Wolfowitz is sued in his individual
22 capacity for ordering, authorizing, condoning, creating methods and procedures

THE HONORABLE MARSHA J. PECHMAN

1 for, exercising command responsibility over, conspiring with, aiding and abetting
 2 subordinates, and/or directly or indirectly participating in the abuses of Plaintiff as
 3 hereinafter alleged. In committing the illegal acts alleged herein , Defendant
 4 Wolfowitz was acting, upon information and belief, outside the scope of his
 5 authority - the scope of his authority, *at most*, being limited to engaging in said acts
 6 against those for whom a reasonable basis existed had engaged in terrorism, acts
 7 supporting terrorism, violence or belligerent acts against the United States or its
 8 citizen, or had supported hostilities in aid of enemy armed forces. In addition, the
 9 defendant was acting outside the scope of his authority for all acts that violated
 10 customary international law and Article III of the Geneva Conventions.

11 29. Defendant Gordon England is a United States citizen and was Secretary of the
 12 Navy from October 1, 2003 until December 28, 2005 and was simultaneously the
 13 Designated Civilian Official of detainees from June 28, 2003 until May 12, 2005.
 14 During this period and in this capacity, Mr. England had a large role in determining
 15 whether a detainee should be released or not, based on the recommendations of a
 16 CSRT or ARB. Mr. England was also Deputy Secretary of Defense from May 13,
 17 2005 until February 20, 2009, including the period of time in which events herein
 18 described occurred. During this period and in this capacity, Mr. England continued
 19 to oversee the flawed CSRT and ARB processes. Defendant England is sued in
 20 his individual capacity for ordering, authorizing, condoning, creating methods and
 21 procedures for, exercising command responsibility over, conspiring with, aiding
 22 and abetting subordinates, and/or directly or indirectly participating in the abuses of

THE HONORABLE MARSHA J. PECHMAN

1 Plaintiff as hereinafter alleged. , In committing the illegal acts alleged herein,
2 Defendant England was acting, upon information and belief, outside the scope of
3 his authority - the scope of his authority, *at most*, being limited to engaging in said
4 acts against those for whom a reasonable basis existed had engaged in terrorism,
5 acts supporting terrorism, violence or belligerent acts against the United States or
6 its citizen, or had supported hostilities in aid of enemy armed forces. In addition,
7 the defendant was acting outside the scope of his authority for all acts that violated
8 customary international law and Article III of the Geneva Conventions, and for acts
9 beyond those authorized in the Army Field Manual.

10 30. Defendant James M. McGarrah, RADM, CEC, USN, is a United States citizen
11 and was the Director of the Office for the Administrative Review of the Detention of
12 Enemy Combatants (OARDEC) and the CSRT from July 2004 to March 2006, who
13 in this capacity, helped develop the flawed ARB process, approved the CSRT
14 recommendation that Mr. Hamad be designated an enemy combatant and that the
15 case be considered final in a determination signed March 18, 2005. Defendant
16 McGarrah is sued in his individual capacity for ordering, authorizing, condoning,
17 creating methods and procedures for, exercising command responsibility over,
18 conspiring with, aiding and abetting subordinates, and/or directly or indirectly
19 participating in the abuses of Plaintiff as hereinafter alleged. In committing the
20 illegal acts alleged herein, Defendant McGarrah was acting, upon information and
21 belief, outside the scope of his authority - the scope of his authority, *at most*, being
22 limited to engaging in said acts against those for whom a reasonable basis existed

THE HONORABLE MARSHA J. PECHMAN

1 had engaged in terrorism, acts supporting terrorism, violence or belligerent acts
2 against the United States or its citizen, or had supported hostilities in aid of enemy
3 armed forces. In addition, the defendant was acting outside the scope of his
4 authority for all acts that violated customary international law and Article III of the
5 Geneva Conventions.

6 31. Defendant Air Force Gen. Richard B. Myers is a United States citizen.

7 Defendant Myers was the Chairman of the Joint Chiefs of Staff from October 1,
8 2001 until October 1, 2005. As the senior uniformed military officer in the chain of
9 command during March 2003 until October 2005, Defendant Myers possessed and
10 exercised command and control over the United States military and the United
11 States detention facility at Guantánamo. Defendant Myers is sued in his individual
12 capacity for ordering, authorizing, condoning, creating methods and procedures
13 for, exercising command responsibility over, conspiring with, aiding and abetting
14 subordinates, and/or directly or indirectly participating in the abuses of Plaintiff as
15 hereinafter alleged. In committing the illegal acts alleged herein, Defendant Myers
16 was acting, upon information and belief, outside the scope of his authority - the
17 scope of his authority, *at most*, being limited to engaging in said acts against those
18 for whom a reasonable basis existed had engaged in terrorism, acts supporting
19 terrorism, violence or belligerent acts against the United States or its citizen, or had
20 supported hostilities in aid of enemy armed forces. In addition, the defendant was
21 acting outside the scope of his authority for all acts that violated customary
22 international law and Article III of the Geneva Conventions.

THE HONORABLE MARSHA J. PECHMAN

32. Defendant Marine Gen. Peter Pace is a United States citizen. Defendant Pace was the Chairman of the Joint Chiefs of Staff from September 30, 2005 until October 1, 2007. As the senior military officer in the chain of command during his tenure as the Chairman of the Joint Chiefs of Staff, Defendant Pace possessed and exercised command and control over the United States military and the United States detention facility at Guantánamo. Defendant Pace is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged. , In committing the illegal acts alleged herein, Defendant Pace was acting, upon information and belief, outside the scope of his authority - the scope of his authority, *at most*, being limited to engaging in said acts against those for whom a reasonable basis existed had engaged in terrorism, acts supporting terrorism, violence or belligerent acts against the United States or its citizen, or had supported hostilities in aid of enemy armed forces. In addition, the defendant was acting outside the scope of his authority for all acts that violated customary international law and Article III of the Geneva Conventions, as well as those that went beyond those authorized by the Army Field Manual.

33. Defendant Admiral Michael Glenn “Mike” Mullen is a United States citizen. Defendant Mullen has been the Chairman of the Joint Chiefs of Staff since October 1, 2007. As the senior military officer in the chain of command, Defendant Mullen possessed and exercised command and control over the United States military and

THE HONORABLE MARSHA J. PECHMAN

1 the United States detention facility at Guantánamo. Defendant Mullen is sued in
 2 his individual capacity for ordering, authorizing, condoning, creating methods and
 3 procedures for, exercising command responsibility over, conspiring with, aiding
 4 and abetting subordinates, and/or directly or indirectly participating in the abuses of
 5 Plaintiff as hereinafter alleged. In committing the illegal acts alleged herein,
 6 Defendant Mullen was acting, upon information and belief, outside the scope of his
 7 authority - the scope of his authority, *at most*, being limited to engaging in said acts
 8 against those for whom a reasonable basis existed had engaged in terrorism, acts
 9 supporting terrorism, violence or belligerent acts against the United States or its
 10 citizen, or had supported hostilities in aid of enemy armed forces. In addition, the
 11 defendant was acting outside the scope of his authority for all acts that violated
 12 customary international law and Article III of the Geneva Conventions, as well as
 13 those that went beyond those authorized by the Army Field Manual.

14 34. Defendant Army Gen. James T. Hill is a United States citizen. Defendant Hill
 15 was the Commanding General of the United States Southern Command
 16 (USSOUTHCOM) from August 18, 2002 until November 9, 2004. During his tenure
 17 as the senior commander with authority over the United States detention facility at
 18 Guantánamo, Defendant Hill possessed and exercised command and control over
 19 subordinates at Guantánamo. Defendant Hill is sued in his individual capacity for
 20 ordering, authorizing, condoning, creating methods and procedures for, exercising
 21 command responsibility over, conspiring with, aiding and abetting subordinates,
 22 and/or directly or indirectly participating in the abuses of Plaintiff as hereinafter

THE HONORABLE MARSHA J. PECHMAN

1 alleged. In committing the illegal acts alleged herein, Defendant Hill was acting,
2 upon information and belief, outside the scope of his authority - the scope of his
3 authority, *at most*, being limited to engaging in said acts against those for whom a
4 reasonable basis existed had engaged in terrorism, acts supporting terrorism,
5 violence or belligerent acts against the United States or its citizen, or had supported
6 hostilities in aid of enemy armed forces. In addition, the defendant was acting
7 outside the scope of his authority for all acts that violated customary international
8 law and Article III of the Geneva Conventions, as well as acts that went beyond the
9 Army Field Manual.

10 35. Defendant Army Gen. Bantz Craddock is a United States citizen. Defendant
11 Craddock was the Commander of the United States Southern Command from
12 November 9, 2004 until October 18, 2006. During his tenure as the senior
13 commander with authority over the United States detention facility at Guantánamo,
14 Defendant Craddock possessed and exercised command and control over
15 subordinates at Guantánamo. Defendant Craddock is sued in his individual
16 capacity for ordering, authorizing, condoning, creating methods and procedures
17 for, exercising command responsibility over, conspiring with, aiding and abetting
18 subordinates, and/or directly or indirectly participating in the abuses of Plaintiff as
19 hereinafter alleged. In committing the illegal acts alleged herein, Defendant
20 Craddock was acting, upon information and belief, outside the scope of his
21 authority - the scope of his authority, *at most*, being limited to engaging in said acts
22 against those for whom a reasonable basis existed had engaged in terrorism, acts

THE HONORABLE MARSHA J. PECHMAN

1 supporting terrorism, violence or belligerent acts against the United States or its
2 citizen, or had supported hostilities in aid of enemy armed forces. In addition, the
3 defendant was acting outside the scope of his authority for all acts that violated
4 customary international law and Article III of the Geneva Conventions, as well as
5 those that went beyond those authorized by the Army Field Manual.

6 36. Defendant Army Maj. Gen. Geoffrey D. Miller is a United States citizen.

7 Defendant Miller was the Commander of Joint Task Force-Guantánamo,
8 responsible for all operations at the detention facility at Guantánamo including the
9 conduct of all interrogations from October 2002 until March 2004. During his
10 tenure, Defendant Miller possessed and exercised command and control over
11 subordinates at Guantánamo. Defendant Miller is sued in his individual capacity
12 for ordering, authorizing, condoning, creating methods and procedures for,
13 exercising command responsibility over, conspiring with, aiding and abetting
14 subordinates, and/or directly or indirectly participating in the abuses of Plaintiff as
15 hereinafter alleged. In committing the illegal acts alleged herein, Defendant Miller
16 was acting, upon information and belief, outside the scope of his authority - the
17 scope of his authority, *at most*, being limited to engaging in said acts against those
18 for whom a reasonable basis existed had engaged in terrorism, acts supporting
19 terrorism, violence or belligerent acts against the United States or its citizen, or had
20 supported hostilities in aid of enemy armed forces. In addition, the defendant was
21 acting outside the scope of his authority for all acts that violated customary
22 international law and Article III of the Geneva Conventions, as well as those that

THE HONORABLE MARSHA J. PECHMAN

1 went beyond those authorized by the Army Field Manual.

2 37. Defendant Army Brig. Gen. Jay Hood is a United States citizen. Defendant
3 Hood was the Commander of Joint Task Force-Guantánamo, responsible for all
4 operations at the detention facility at Guantánamo including the conduct of all
5 interrogations from March 2004 until March 2006. During his tenure, Defendant
6 Hood possessed and exercised command and control over subordinates at
7 Guantánamo. Defendant Hood is sued in his individual capacity for ordering,
8 authorizing, condoning, creating methods and procedures for, exercising command
9 responsibility over, conspiring with, aiding and abetting subordinates, and/or
10 directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged. In
11 the acts illegal alleged herein, Defendant Hood was acting, upon information and
12 belief, outside the scope of his authority - the scope of his authority, *at most*, being
13 limited to engaging in said acts against those for whom a reasonable basis existed
14 had engaged in terrorism, acts supporting terrorism, violence or belligerent acts
15 against the United States or its citizen, or had supported hostilities in aid of enemy
16 armed forces. In addition, the defendant was acting outside the scope of his
17 authority for all acts that violated customary international law and Article III of the
18 Geneva Conventions, as well as those that went beyond those authorized by the
19 Army Field Manual.

20 38. Defendant Navy Rear Adm. Harry B. Harris, Jr. is a United States citizen.
21 Defendant Harris was the Commander of Joint Task Force-Guantánamo (JTF-
22 GTMO) during 2006 and 2007, for over a year during the time in which Plaintiff was

THE HONORABLE MARSHA J. PECHMAN

1 detained. As Commander of JTF-GTMO, Defendant Harris had responsibilities for
2 issuing, implementing and enforcing policies that touched every aspect of
3 detainees' daily existence, including Plaintiff's. In fact, Defendant Harris was
4 responsible for all interrogation and operations in Guantanamo during this time. In
5 2007, before Plaintiff was released, Defendant Harris was promoted to Director of
6 Operations for the United States Southern Command (USSOUTHCOM). In both
7 positions, Defendant Harris oversaw all detainee operations at Guantanamo Bay.
8 Defendant Harris is sued in his individual capacity for ordering, authorizing,
9 condoning, creating methods and procedures for, exercising command
10 responsibility over, conspiring with, aiding and abetting subordinates, and/or directly
11 or indirectly participating in the abuses of Plaintiff as hereinafter alleged. In
12 committing the illegal acts alleged herein, Defendant Harris was acting, upon
13 information and belief, outside the scope of his authority - the scope of his authority,
14 *at most*, being limited to engaging in said acts against those for whom a reasonable
15 basis existed had engaged in terrorism, acts supporting terrorism, violence or
16 belligerent acts against the United States or its citizen, or had supported hostilities
17 in aid of enemy armed forces. In addition, the defendant was acting outside the
18 scope of his authority for all acts that violated customary international law and
19 Article III of the Geneva Conventions, as well as those that went beyond those
20 authorized by the Army Field Manual.

21 39. Defendant Rear Adm. Mark H. Buzby is a United States citizen. Defendant
22 Buzby was the Commander of Joint Task Force-Guantánamo, responsible for all

THE HONORABLE MARSHA J. PECHMAN

1 operations at the detention facility at Guantánamo including the conduct of all
2 interrogations from May 2007 until January 2008. During his tenure, Defendant
3 Buzby possessed and exercised command and control over subordinates at
4 Guantánamo. Defendant Buzby is sued in his individual capacity for ordering,
5 authorizing, condoning, creating methods and procedures for, exercising command
6 responsibility over, conspiring with, aiding and abetting subordinates, and/or
7 directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged. In
8 committing the illegal acts alleged herein, Defendant Buzby was acting, upon
9 information and belief, outside the scope of his authority - the scope of his
10 authority, *at most*, being limited to engaging in said acts against those for whom a
11 reasonable basis existed had engaged in terrorism, acts supporting terrorism,
12 violence or belligerent acts against the United States or its citizen, or had
13 supported hostilities in aid of enemy armed forces. In addition, the defendant was
14 acting outside the scope of his authority for all acts that violated customary
15 international law and Article III of the Geneva Conventions, as well as those that
16 went beyond those authorized by the Army Field Manual.

17 40. Defendant Army Col. Adolph McQueen is a United States citizen. Defendant
18 McQueen was the Commander of Joint Detention Operations Group at the United
19 States detention facility at Guantánamo, responsible for guarding the detainees
20 and providing security from November 2002 until August 2003. During his tenure,
21 Defendant McQueen possessed and exercised command and control over
22 subordinates at Guantánamo. Defendant McQueen is sued in his individual

THE HONORABLE MARSHA J. PECHMAN

1 capacity for ordering, authorizing, condoning, creating methods and procedures
2 for, exercising command responsibility over, conspiring with, aiding and abetting
3 subordinates, and/or directly or indirectly participating in the abuses of Plaintiff as
4 hereinafter alleged. In committing the illegal acts alleged herein, Defendant
5 McQueen was acting, upon information and belief, outside the scope of his
6 authority - the scope of his authority, *at most*, being limited to engaging in said acts
7 against those for whom a reasonable basis existed had engaged in terrorism, acts
8 supporting terrorism, violence or belligerent acts against the United States or its
9 citizen, or had supported hostilities in aid of enemy armed forces. In addition, the
10 defendant was acting outside the scope of his authority for all acts that violated
11 customary international law and Article III of the Geneva Conventions, as well as
12 those that went beyond those authorized by the Army Field Manual.

13 41. Defendant Army Brig. Gen. Nelson Cannon is a United States citizen.
14 Defendant Cannon was the Commander of Joint Detention Operations Group at
15 the United States detention facility at Guantánamo, responsible for guarding the
16 detainees and providing security from August 2003 until September 2004. During
17 his tenure, Defendant Cannon possessed and exercised command and control
18 over subordinates at Guantánamo. Defendant Cannon is sued in his individual
19 capacity for ordering, authorizing, condoning, creating methods and procedures
20 for, exercising command responsibility over, conspiring with, aiding and abetting
21 subordinates, and/or directly or indirectly participating in the abuses of Plaintiff as
22 hereinafter alleged. In committing the illegal acts alleged herein, Defendant

THE HONORABLE MARSHA J. PECHMAN

1 Cannon was acting, upon information and belief, outside the scope of his authority
2 - the scope of his authority, *at most*, being limited to engaging in said acts against
3 those for whom a reasonable basis existed had engaged in terrorism, acts
4 supporting terrorism, violence or belligerent acts against the United States or its
5 citizen, or had supported hostilities in aid of enemy armed forces. In addition, the
6 defendant was acting outside the scope of his authority for all acts that violated
7 customary international law and Article III of the Geneva Conventions, as well as
8 those that went beyond those authorized by the Army Field Manual.

9 42. Defendant Army Col. Michael "Mike" Bumgarner is a United States citizen.

10 Defendant Bumgarner was the Commander of Joint Detention Operations Group at
11 the United States detention facility at Guantánamo, responsible for guarding the
12 detainees and providing security from April 2005 until March 2006. During his
13 tenure, Defendant Bumgarner possessed and exercised command and control
14 over subordinates at Guantánamo. Defendant Bumgarner is sued in his individual
15 capacity for ordering, authorizing, condoning, creating methods and procedures
16 for, exercising command responsibility over, conspiring with, aiding and abetting
17 subordinates, and/or directly or indirectly participating in the abuses of Plaintiff as
18 hereinafter alleged. In committing the illegal acts alleged herein, Defendant
19 Bumgarner was acting, upon information and belief, outside the scope of his
20 authority - the scope of his authority, *at most*, being limited to engaging in said acts
21 against those for whom a reasonable basis existed had engaged in terrorism, acts
22 supporting terrorism, violence or belligerent acts against the United States or its

THE HONORABLE MARSHA J. PECHMAN

1 citizen, or had supported hostilities in aid of enemy armed forces. In addition, the
2 defendant was acting outside the scope of his authority for all acts that violated
3 customary international law and Article III of the Geneva Conventions, as well as
4 those that went beyond those authorized by the Army Field Manual.

5 43. Defendant Army Col. Wade Dennis is a United States citizen. Defendant
6 Dennis was the Commander of Joint Detention Operations Group at the U.S.
7 detention facility at Guantánamo, responsible for guarding the detainees and
8 providing security from March 2006 until June 2007. During his tenure, Defendant
9 Dennis possessed and exercised command and control over subordinates at
10 Guantánamo. Defendant Dennis is sued in his individual capacity for ordering,
11 authorizing, condoning, creating methods and procedures for, exercising command
12 responsibility over, conspiring with, aiding and abetting subordinates, and/or
13 directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged. In
14 committing the illegal acts alleged herein, Defendant Dennis was acting, upon
15 information and belief, outside the scope of his authority - the scope of his
16 authority, *at most*, being limited to engaging in said acts against those for whom a
17 reasonable basis existed had engaged in terrorism, acts supporting terrorism,
18 violence or belligerent acts against the United States or its citizen, or had
19 supported hostilities in aid of enemy armed forces. In addition, the defendant was
20 acting outside the scope of his authority for all acts that violated customary
21 international law and Article III of the Geneva Conventions, as well as those that
22 went beyond those authorized by the Army Field Manual.

THE HONORABLE MARSHA J. PECHMAN

1 44. Defendant Army Col. Bruce Vargo is a United States citizen. Defendant Vargo
2 was the Commander of Joint Detention Operations Group at the United States
3 detention facility at Guantánamo, responsible for guarding the detainees and
4 providing security from July 2007 until Mr. Hamad's release in December 2007.
5 During his tenure, Defendant Vargo possessed and exercised command and
6 control over subordinates at Guantánamo. Defendant Vargo is sued in his
7 individual capacity for ordering, authorizing, condoning, creating methods and
8 procedures for, exercising command responsibility over, conspiring with, aiding
9 and abetting subordinates, and/or directly or indirectly participating in the abuses of
10 Plaintiff as hereinafter alleged. In committing the illegal acts alleged herein,
11 Defendant Vargo was acting, upon information and belief, outside the scope of his
12 authority - the scope of his authority, *at most*, being limited to engaging in said acts
13 against those for whom a reasonable basis existed had engaged in terrorism, acts
14 supporting terrorism, violence or belligerent acts against the United States or its
15 citizen, or had supported hostilities in aid of enemy armed forces. In addition, the
16 defendant was acting outside the scope of his authority for all acts that violated
17 customary international law and Article III of the Geneva Conventions, as well as
18 those that went beyond those authorized by the Army Field Manual.

19 45. Defendant Esteban (aka Steven, aka Stephen) Rodriguez is a United States
20 citizen. Defendant Rodriguez was the civilian Director of the Joint Intelligence
21 Group responsible for managing intelligence-gathering operations at Guantánamo
22 and reporting to the Commander of the Joint Task Force at Guantánamo from July

THE HONORABLE MARSHA J. PECHMAN

1 2003 to October 2005. During his tenure, Defendant Rodriguez possessed and
2 exercised command and control over subordinates at Guantánamo. Defendant
3 Rodriguez is sued in his individual capacity for ordering, authorizing, condoning,
4 creating methods and procedures for, exercising command responsibility over,
5 conspiring with, aiding and abetting subordinates, and/or directly or indirectly
6 participating in the abuses of Plaintiff as hereinafter alleged. In committing the
7 illegal acts alleged herein, Defendant Rodriguez was acting, upon information and
8 belief, outside the scope of his authority - the scope of his authority, *at most*, being
9 limited to engaging in said acts against those for whom a reasonable basis existed
10 had engaged in terrorism, acts supporting terrorism, violence or belligerent acts
11 against the United States or its citizen, or had supported hostilities in aid of enemy
12 armed forces. In addition, the defendant was acting outside the scope of his
13 authority for all acts that violated customary international law and Article III of the
14 Geneva Conventions, as well as those that went beyond those authorized by the
15 Army Field Manual.

16 46. Defendant Lt. General Daniel McNeill is a United States citizen. Defendant
17 McNeill was Commander of the Combined Forces Command of Afghanistan for the
18 entire duration of Plaintiff's detention at Bagram Air Base. Defendant McNeill was
19 responsible for all forces, intelligence activity, and treatment of prisoners in
20 Afghanistan during his tenure. During his tenure, Defendant McNeill possessed
21 and exercised command and control over subordinates in Afghanistan. Defendant
22 McNeill is sued in his individual capacity for ordering, authorizing, condoning,

THE HONORABLE MARSHA J. PECHMAN

1 creating methods and procedures for, exercising command responsibility over,
2 conspiring with, aiding and abetting subordinates, and/or directly or indirectly
3 participating in the abuses of Plaintiff as hereinafter alleged. In committing the
4 illegal acts alleged herein, Defendant McNeill was acting, upon information and
5 belief, outside the scope of his authority - the scope of his authority, *at most*, being
6 limited to engaging in said acts against those for whom a reasonable basis existed
7 had engaged in terrorism, acts supporting terrorism, violence or belligerent acts
8 against the United States or its citizen, or had supported hostilities in aid of enemy
9 armed forces. In addition, the defendant was acting outside the scope of his
10 authority for all acts that violated customary international law and Article III of the
11 Geneva Conventions, as well as those that went beyond those authorized by the
12 Army Field Manual.

13 47. Defendant Brigadier General Gregory J. Ihde, a United States citizen, was the
14 Commander of the United States air base in Bagram, Afghanistan during the time
15 Mr. Hamad was detained there from January 2003 to March 2003. Defendant Ihde
16 exercised command responsibility over, conspired with, aided and abetted
17 subordinates, and/or directly or indirectly participated in Mr. Hamad's prolonged
18 arbitrary detention, cruel, inhuman, or degrading treatment, torture, forced
19 disappearance and due process violations at Bagram as hereinafter alleged. In
20 committing the illegal acts alleged herein, Defendant Ihde was acting, upon
21 information and belief, outside the scope of his authority - the scope of his authority,
22 *at most*, being limited to engaging in said acts against those for whom a reasonable

THE HONORABLE MARSHA J. PECHMAN

1 basis existed had engaged in terrorism, acts supporting terrorism, violence or
2 belligerent acts against the United States or its citizen, or had supported hostilities
3 in aid of enemy armed forces. In addition, the defendant was acting outside the
4 scope of his authority for all acts that violated customary international law and
5 Article III of the Geneva Conventions, as well as those that went beyond those
6 authorized by the Army Field Manual.

7 48. Defendant John Doe 1, Colonel, United States Army Tribunal President is a
8 United States citizen and presided over the flawed CSRT that recommended Mr.
9 Hamad be designated an enemy combatant, despite a strong dissenting opinion
10 which concluded that Mr. Hamad's enemy combatant status determination was
11 unwarranted and as such, the result would be "unconscionable." Defendant John
12 Doe 1 is sued in his individual capacity for ordering, authorizing, condoning,
13 creating methods and procedures for, exercising command responsibility over,
14 conspiring with, aiding and abetting subordinates, and/or directly or indirectly
15 participating in the abuses of Plaintiff as hereinafter alleged. In committing the
16 illegal acts alleged herein, Defendant Doe was acting, upon information and belief,
17 outside the scope of his authority - the scope of his authority, *at most*, being limited
18 to engaging in said acts against those for whom a reasonable basis existed had
19 engaged in terrorism, acts supporting terrorism, violence or belligerent acts against
20 the United States or its citizen, or had supported hostilities in aid of enemy armed
21 forces. In addition, the defendant was acting outside the scope of his authority for
22 all acts that violated customary international law and Article III of the Geneva

THE HONORABLE MARSHA J. PECHMAN

1 Conventions, as well as those that went beyond those authorized by the Army Field
2 Manual.

3 49. Defendant John Doe 2, Captain, USN, is a United States citizen and was
4 Presiding Officer of the flawed ARB, which determined that Mr. Hamad be
5 recommended for transfer back to the Sudan. Despite this recommendation,
6 Defendant Doe 2 failed to provide or ensure proper notification to Mr. Hamad and/or
7 Mr. Hamad's habeas counsel of the ARB's decision. Defendant John Doe 2 is sued
8 in his individual capacity for ordering, authorizing, condoning, creating methods and
9 procedures for, exercising command responsibility over, conspiring with, aiding and
10 abetting subordinates, and/or directly or indirectly participating in the abuses of
11 Plaintiff as hereinafter alleged. In committing the illegal acts alleged herein,
12 Defendant Doe 2 was acting, upon information and belief, outside the scope of his
13 authority - the scope of his authority, *at most*, being limited to engaging in said acts
14 against those for whom a reasonable basis existed had engaged in terrorism, acts
15 supporting terrorism, violence or belligerent acts against the United States or its
16 citizen, or had supported hostilities in aid of enemy armed forces. In addition, the
17 defendant was acting outside the scope of his authority for all acts that violated
18 customary international law and Article III of the Geneva Conventions, as well as
19 those that went beyond those authorized by the Army Field Manual.

20 50. Plaintiff does not know the true names and capacities of Defendants sued
21 herein as John Does 3-100, and therefore sues these Defendants by fictitious
22 names. John Does 3-100 are sued in their individual capacity, and are the military,

THE HONORABLE MARSHA J. PECHMAN

1 intelligence, and civilian personnel who exercised command responsibility over,
2 conspired with, aided and abetted subordinates, and/or directly or indirectly
3 participated in Mr. Hamad's prolonged arbitrary detention, cruel, inhuman, or
4 degrading treatment, torture, targeting of a civilian, forced disappearance and due
5 process violations as hereinafter alleged.

6 51. All Defendants named herein are sued in their individual capacity and are
7 alleged to have acted, upon information and belief, outside the scope of their
8 employment and/or authority, especially with regard to men such as Mr. Hamad, a
9 civilian, who was not apprehended on a battlefield and for whom there was
10 insufficient evidence to warrant his taking, detention or treatment.

11 **FTCA and Exhaustion**

12 52. Plaintiff reserves the right to proceed under the Federal Tort Claims Act
13 (FTCA) in the event individual defendants are found to have acted within the scope
14 of their employment and the United States is allowed to substitute itself under the
15 Westfall Act. A FTCA claim was filed on December 3, 2009, to preserve Plaintiff's
16 right to proceed under the FTCA if such occurs.

17 **IV. STATEMENT OF FACTS**

18 **Background**

19 53. From the outset of the War on Terror following the September 11, 2001
20 attacks, Pakistan has been a key front-line ally to the United States. As
21 documented in the recent State Department Report on Pakistan issued in March
22 2009, "The United States-Pakistan relationship changed significantly once Pakistan

THE HONORABLE MARSHA J. PECHMAN

1 agreed to support the United States' campaign to eliminate the Taliban in
2 Afghanistan and to join the United States in the Global War on Terror. Since
3 September 2001, Pakistan has provided extensive assistance in the war on terror
4 by capturing more than 600 al-Qaida members and their allies. The United States
5 has stepped up its economic assistance to Pakistan, providing debt relief and
6 support for a major effort for education reform."

7 54. As part of this relationship change, the United States and Pakistan established
8 the Working Group on Counterterrorism and Law Enforcement Cooperation in
9 2002, with the first meeting held in May of that year. Around this time, United
10 States involvement, particularly the Federal Bureau of Investigation (FBI), with local
11 Pakistani police increased. It has been reported that FBI agents actively took part
12 in raids with local police, carrying weapons and directing local police in nighttime
13 arrests.

14 55. The United States military has maintained continuous control and jurisdiction
15 over Bagram since December 2001, following the invasion of Afghanistan. This
16 control is evidenced by the Lease Agreement and the Status of Forces Agreement
17 (SOFA) between the United States and Afghanistan. The base has served as a
18 primary staging center for the military during Operation: Enduring Freedom. It has
19 also served as the primary known detention centers, interrogation points, and
20 transfer centers for detainees arrested in the region, including Pakistan. Numerous
21 media reports and human rights organizations have documented the harsh
22 conditions and treatment administered to detainees at Bagram, which were

THE HONORABLE MARSHA J. PECHMAN

1 particularly harsh during the initial years of its operation under United States
2 control.

3 56. The United States has maintained exclusive and continuous control and
4 jurisdiction over Guantánamo pursuant to a 1903 Lease Agreement with Cuba.
5 Beginning in early 2002, the United States began to transfer detainees seized
6 throughout the world to Guantánamo. Numerous media reports and human rights
7 organizations have documented harsh conditions and treatment administered to
8 detainees at Guantánamo.

9 57. At Guantánamo, detainees have been held indefinitely without charges ever
10 being filed against them. Under the auspices of the United States Department of
11 Defense , the Office for the Administrative Review of the Detention of Enemy
12 Combatants (OARDEC) was created in 2004 to establish military tribunals to
13 determine the status of the individuals detained at Guantánamo. The two
14 procedures established by OARDEC were the Combatant Status Review Tribunals
15 (CSRT) and Administrative Review Boards (ARB).

16 58. Detainees' statuses have been determined by a flawed CSRT procedure. The
17 process fails to provide for adequate due process on numerous aspects because
18 detainees are presumed guilty of being enemy combatants, not permitted to review
19 classified evidence that is used to justify an enemy combatant determination, not
20 afforded access to counsel, and not permitted to present their own witnesses or
21 evidence.

22 59. Following an enemy combatant determination by a CSRT, a detainee's status

THE HONORABLE MARSHA J. PECHMAN

1 is to be reviewed annually by an ARB. The ARB is to recommend, based on
2 current evidence at the time, whether the detainee should be released, transferred,
3 or continue to be detained. At its core, the ARB was designed to “ensure no one is
4 detained any longer than is warranted . . .”

Facts Specific to Plaintiff

5
6 60. Mr. Hamad was in the exclusive custody, care, and control of Defendants at
7 Bagram and Guantánamo from January 2003 until being released and transferred
8 to the Sudan in December 2007. He was originally detained under the name
9 Hassan Adel Hussein with ISN Number 940.

10 61. Mr. Hamad was seized on July 18, 2002 during a middle of the night raid by
11 Pakistani authorities, upon information and belief, at the direction of an unknown
12 American official. The private building in Peshawar that Mr. Hamad was living in
13 was raided by six to eight heavily armed men. The men raided Mr. Hamad's
14 upstairs apartment, as well as the apartment of his downstairs neighbor, an
15 Algerian refugee. After being held in a local jail overnight, Mr. Hamad was
16 transferred on July 19, 2002 to a jail in Islamabad, Pakistan, where he was
17 interrogated and held for two days with no water, food, or outside contact.

18 62. On July 22, 2002, Mr. Hamad was hooded, chained with heavy metal links and
19 old-fashioned padlocks, and transferred to another Pakistani prison. It is possible
20 this location was in Islamabad; it is also possible this location was at a
21 site controlled/operated at least partly by the United States military. During the six
22 months that Mr. Hamad was detained at this location, his health deteriorated

THE HONORABLE MARSHA J. PECHMAN

1 dramatically as a consequence of the prison conditions. He was given dirty water
2 to drink, rotten food to eat, and only one set of clothes to use throughout the
3 summer heat and winter cold that spanned the time he spent there. He lost
4 approximately 65 pounds (dropping from 200 pounds in July to 135 pounds in
5 December) after being denied medical care for dysentery.

6 63. During his detainment at this Pakistani prison, Mr. Hamad was never permitted
7 to have outside contact, including with the International Committee of the Red
8 Cross (ICRC), his family, consulate, or an attorney. Mr. Hamad was never charged
9 with a crime or interrogated. His family did not know what had happened to him or
10 where he was.

11 64. In approximately January 2003, Mr. Hamad was hooded, chained, and driven
12 in a van to be transferred once again. Upon arrival at a tarmac, Mr. Hamad was
13 thrown to the ground, roughly kicked, and retrussed in plastic cuffs by, upon
14 information and belief, American officials. Mr. Hamad was then put onto a non-
15 commercial flight to Bagram that lasted approximately two hours.

16 65. Mr. Hamad was a prisoner under the exclusive control of the United States at
17 the detention center at Bagram from approximately January 2003 until
18 approximately March 15, 2003. Upon arrival at Bagram, American officials pushed
19 and dragged Mr. Hamad outside, kicked him, cut his clothes off with a knife, and left
20 him naked outside in the freezing cold. They set dogs upon Mr. Hamad while
21 watching United States military personnel laughed and mocked him.

22 66. Eventually, Mr. Hamad was taken into an empty prison cell in a hangar and

THE HONORABLE MARSHA J. PECHMAN

1 given abrasive clothing to wear. He was forced to stand there for three straight
2 days without sleep or food. He was then taken into another room where for the
3 next three days he was interrogated numerous times and continued to be deprived
4 of food and sleep. Every time he was moved for interrogation, Mr. Hamad was
5 jerked, pushed, and insulted.

6 67. As a result of the prison in Pakistan, lack of sleep, lack of food, and the cold in
7 the prison in Afghanistan, Mr. Hamad collapsed from malnourishment and
8 dehydration, needing two full weeks to recover at the prison hospital. After being
9 discharged from the hospital, he was taken to a new cell.

10 68. In early March 2003, finally, for the first time since being seized on July 18,
11 2002, Mr. Hamad had contact with outsiders, the ICRC. In addition, for the first
12 time, he was permitted to write a letter to his wife, which was screened by United
13 States military officers.

14 69. During his detention at Bagram, Mr. Hamad was subjected to prolonged
15 arbitrary detention, cruel, inhuman, or degrading treatment, torture, due process
16 violations, repeatedly interrogation, and deprived of appropriate care to the point of
17 requiring hospitalization. He was deprived of all outside contact until early March
18 2003, shortly before his transfer to Guantánamo.

19 70. During his detention at Bagram, Mr. Hamad did not receive any notice of the
20 reasons why the government apprehended and detained him. Mr. Hamad was not
21 charged with any crime or offense, and he was deprived of any proceeding in which
22 he could challenge the basis for his detention. No evidence was presented against

THE HONORABLE MARSHA J. PECHMAN

1 him. Rather, he was simply imprisoned without cause and routinely subjected to
2 harsh interrogations. Given his role at Bagram, Defendant McNeill personally
3 participated in violating Mr. Hamad's rights through his command authority.

4 71. On approximately March 15, 2003, Mr. Hamad was shackled and blindfolded,
5 had muffs placed on his ears, and strapped down with a full-face muzzle for the
6 entire thirty-hour flight to Guantánamo. Bathroom use during the flight was
7 restricted.

8 72. Mr. Hamad was a prisoner under the exclusive control of the United States at
9 Guantánamo from approximately March 15, 2003, until his release and subsequent
10 transfer back to the Sudan on approximately December 12, 2007. During this time,
11 Mr. Hamad continued to be interrogated and detained, despite no reasonable basis
12 for such treatment.

13 73. For the first few weeks at Guantánamo, Mr. Hamad was held in isolation and
14 interrogated daily. Interrogations tapered off and Mr. Hamad was eventually moved
15 to Camp 4 in Camp Delta. However, during one month of his stay, Mr. Hamad was
16 held in Camp 1. There, Mr. Hamad was isolated for twenty-two or twenty-three
17 hours a day without a mattress, blanket, regular showers, or toilet paper.

18 74. Mr. Hamad was not given notice of the basis for his detention until more than
19 two years after first being detained, after the CSRT was convened in November
20 2004.

21 **CSRT Determination and ARB Review**

22 75. It was not until March 2005 that Mr. Hamad was officially labeled as an

THE HONORABLE MARSHA J. PECHMAN

1 “enemy combatant” by the flawed CSRT process, nearly three full years since
2 initially being detained. The CSRT itself did not afford Mr. Hamad elementary due
3 process.

4 76. A divided panel, which is rare for these military tribunals, determined that Mr.
5 Hamad was an enemy combatant simply because of his association as an
6 employee of two organizations for whom he had done humanitarian and charity
7 work (one of which he had left years before), and nothing more.

8 77. The dissenting member of the panel found that Hamad's designation as an
9 enemy combatant was unwarranted and would have “unconscionable results.” The
10 decision took into account both classified and unclassified information.

11 78. A second CSRT was ordered for Mr. Hamad one month before he was
12 ultimately transferred to the Sudan in December of 2007. A second CSRT is
13 unusual, and indicates that the first CSRT determination was either not accurate or
14 that exculpatory evidence was not considered.

15 79. The CSRT's determination of Mr. Hamad as an enemy combatant was
16 reviewed only one time by a military ARB, which was convened between June 28,
17 2005 and August 2005. The purpose of the ARB is to provide for annual review in
18 light of the flawed CSRT procedures. In November 2005, the ARB determined,
19 upon information and belief, that Mr. Hamad was eligible to be released from
20 Guantánamo and sent home to the Sudan. Neither Mr. Hamad nor his habeas
21 counsel received notification of the Board's findings; nor did they receive an answer
22 to his counsel's inquiries.

THE HONORABLE MARSHA J. PECHMAN

1 80. No ARB was convened for Mr. Hamad in 2006, despite the requirement that an
2 ARB be held annually. However, on February 22, 2007, Mr. Hamad's habeas
3 counsel received an email from OARDEC, notifying them that Mr. Hamad, based on
4 either the ARB process or the process the Department of Defense had in place
5 prior to ARBs, had in fact been "approved to leave Guantánamo." This notification
6 via email came fifteen months after the ARB had determined that Mr. Hamad was
7 eligible for transfer.

8 81. Despite the ARB determination and email notification, Mr. Hamad was not
9 transferred to the Sudan until approximately December 12, 2007, following
10 negotiations between officials of the United States and Sudanese governments.

11 82. Certain officials within the U.S. government, including all Defendants, knew or
12 should have known, or believed that many of the men seized in Pakistan and
13 Afghanistan and held at Guantánamo Bay and Bagram were innocent. Mr. Hamad
14 was one of these innocent men.

15 83. Col. Lawrence B. Wilkerson (Ret.), a former high-level official with the United
16 States government has alleged, through a declaration in plaintiff's counsel's
17 possession, that he has personal knowledge that certain United States officials,
18 including Defendant Rumsfeld, knew that they had seized and were holding
19 innocent men at Guantánamo Bay, and that they simply refused to release them out
20 of fear of political repercussions. The declaration also alleges that there was no
21 meaningful way to determine who was an enemy combatant and who was not, both
22 in the field and at Guantánamo Bay.

THE HONORABLE MARSHA J. PECHMAN

1 84. Upon information and belief, only 5-7% of the men held at Guantanamo Bay
2 were actually apprehended during military engagement or “on the battlefield.”
3 Nearly 93-95% of the men were not. Many of these men were taken by Pakistanis
4 and Afghans who received a bounty, or did it for retribution or revenge. Upon
5 information and belief, there was no credible effort to determine whether there was
6 reasonable suspicion or belief – let alone any suspicion or belief – that men
7 apprehended had been engaged in or supported hostilities toward or against the
8 United States.

9 85. As officers of the U.S. military, military official defendants’ authority is limited by
10 numerous legal authorities, including the Army Field Manual and the Geneva
11 Conventions. All actions taken, or inaction, with regard to Plaintiff, who was a
12 civilian, that resulted in prolonged arbitrary detention, torture, cruel, inhuman and
13 degrading treatment, violations of due process, forced disappearance, were outside
14 such authority, and all defendants knew or should have known such actions were
15 outside their legal authority, and were illegal.

16 **Additional Information on the Role of Individual Defendants**

17 86. Throughout the period when Defendant Rumsfeld was Secretary of Defense
18 and exercised command authority over Guantanamo, he and his subordinates
19 including Defendants Miller, Hood, Harris, Hill, McQueen, Cannon, Bumgarner, and
20 Dennis, oversaw a system of detention, coercive interrogations and harsh and
21 humiliating conditions in contravention of the Geneva Conventions, customary
22 international law, and the Army Field Manual.

THE HONORABLE MARSHA J. PECHMAN

1 87. Specifically, in October 2002, Defendant Rumsfeld ordered an overhaul of the
2 operation at Guantanamo resulting in new interrogation techniques that did not
3 conform to the Geneva Conventions of 1949 or customary international law and
4 went beyond those approved in the U.S. Army Field Manual. All Defendants knew
5 or should have known that such techniques were unlawful.

6 88. In a memo dated October 25, 2002, Defendant Hill requested in writing
7 permission to use enhanced interrogation techniques, later used against Plaintiff,
8 that constitute torture and cruel, inhuman and degrading treatment, in direct
9 contradiction to the Geneva Conventions, customary international law, and the
10 Army Field Manual. Defendant Hill justified violations of the Geneva Convention in
11 the use of such "counter-resistance techniques" by noting detainees' tenacious
12 resistance against the more humane interrogation methods lawfully employed at the
13 time. He expressed reservations about the legality of the most severe types of
14 methods (such as the implied or explicit use of threats of death to detainee and/or
15 his family), but asked for authorization to use them nonetheless.

16 89. In addition, during Defendant Hill's leadership, the ICRC reported that the
17 military was intentionally using psychological and physical coercion "tantamount to
18 torture" on prisoners, and that their treatment was increasingly "refined and
19 repressive."

20 90. Beginning November 8, 2002, Defendant Miller commanded JTF-GTMO (a unit
21 that combined the detention and security operations (JTF-160) and interrogators
22 and intelligence gathering function (JRF-170). In that position he oversaw both

THE HONORABLE MARSHA J. PECHMAN

1 military intelligence and military police functions. Defendant Miller was in regular
2 contact with Defendant Rumsfeld during his time as commander at Guantanamo.

3 91. Defendant Wolfowitz discussed the use of aggressive interrogation techniques
4 at Guantanamo with others in the Department of Defense leadership, and
5 concurred with the November 27, 2002, recommendation to Defendant Rumsfeld
6 that the majority of the aggressive techniques be approved, including stress
7 positions, removal of clothing, use of phobias, and deprivation of light and auditory
8 stimuli. Defendant Wolfowitz encouraged others to use even more aggressive
9 interrogation techniques and expressed dissatisfaction with the level of intelligence
10 gathering taking place at Guantanamo. Defendant Wolfowitz was well informed of
11 the day-to-day operations at Guantanamo, as he was briefed on an at-least-weekly
12 basis by Defendant Miller during the latter's time as Commander of Guantanamo.

13 92. On December 2, 2002, Defendant Rumsfeld authorized aggressive
14 interrogation techniques. On that date, Defendant Rumsfeld signed a
15 memorandum approving numerous illegal interrogation methods, including putting
16 detainees in "stress positions" for up to four hours; forcing detainees to strip naked,
17 intimidating detainees with dogs, interrogating them for 20 hours at a time, forcing
18 them to wear hoods, shaving their heads and beards, keeping them in total
19 darkness and silence, and using what was euphemistically called "mild, non-
20 injurious physical contact" techniques. Defendant Rumsfeld and all Defendants
21 knew or should have known that these techniques were unlawful, and in
22 contravention of the Geneva Conventions and customary international law. Upon

THE HONORABLE MARSHA J. PECHMAN

1 information and belief, they also knew or should have known that they were not
2 authorized to use them against those who were innocent and/or for whom there
3 was not a sufficient basis to hold in custody.

4 93. Defendant Miller unified the command over military intelligence units and
5 military police units, and had them work together to weaken detainees for
6 interrogation. After the approval of the harsh interrogation techniques in the
7 December 2, 2002, memorandum by Defendant Rumsfeld, Defendant Miller
8 implemented the techniques, which were designed to 'soften up' detainees. These
9 included sleep deprivation, extended isolation, forcing detainees to stand or crouch
10 in 'stress positions,' stripping detainees and exposure to extremes of heat and cold.
11 Plaintiff suffered from these techniques. Defendant Miller and the other defendants
12 knew or should have known that such techniques were in contravention of the
13 Geneva Conventions, and international law and thus not legal, and that he was not
14 authorized to use them against innocent civilians.

15 94. On January 15, 2003, Secretary Rumsfeld rescinded permission for the more
16 controversial techniques, although upon information and belief, under Defendant
17 Miller's command at Guantánamo, these techniques continued to be used. The
18 defendants responsible for Guantanamo Bay and Bagram, upon information and
19 belief, continued to use some of the techniques. They were not authorized to do so
20 by the United States, nor by international law.

21 95. On March 21, 2003, Defendant Hill again sent a memorandum to Defendant
22 Myers regarding the interrogation techniques that had been temporarily rescinded

THE HONORABLE MARSHA J. PECHMAN

1 by Defendant Rumsfeld in January of that year. Defendant Hill's March 21, 2003
2 memo stated that both he and Defendant Miller felt that approval of *all* of the
3 previously authorized techniques (all of which had been previously placed in
4 categories - Categories I, II and III – depending on their level of severity) was
5 "essential." Defendant Hill stated that "both Geoff Miller and I believe that we need
6 as many appropriate tools as possible" and called Category II and the one
7 previously authorized Category III technique "critical to maximizing our ability to
8 accomplish the mission, now and in the future." The "critical" techniques referred to
9 by Defendant Hill included stress positions, deprivation of light and auditory stimuli,
10 removal of clothing, use of detainee phobias such as dogs, and the one Category III
11 technique the Secretary had authorized, which included grabbing, poking, and light
12 pushing. In a prior communication, Defendant Hill had been made aware that those
13 in Category III were likely not lawful and could expose interrogators to possible
14 federal prosecution.

15 96. On April 16, 2003, Defendant Rumsfeld issued the "Memorandum for the
16 Commander, US Southern Command: Counter-Resistance Techniques in the War
17 on Terrorism," which contains 24 interrogation techniques, with the proviso that
18 "use of these techniques is limited to interrogations of unlawful combatants held at
19 Guantanamo Bay, Cuba." These techniques, however, were inconsistent with the
20 United States' obligations under international law. He and the other defendants
21 knew or should have known such were illegal, and also that they were not
22 authorized to use them on innocent civilians. In addition, they were not authorized

THE HONORABLE MARSHA J. PECHMAN

1 to use them against those who had not been properly determined to be unlawful
2 combatants.

3 97. Defendant Miller supported and approved these techniques and oversaw their
4 implementation at a time when Plaintiff was detained at Guantanamo, even though
5 he knew they were illegal under international law.

6 98. Serious mistreatment of detainees was a constant, unrelenting theme under
7 Defendant Miller's command. In July 2003, Defendant Miller sought approval for an
8 interrogation plan that included previously banned interrogation techniques.

9 Moreover, upon information and belief, others held continued to suffer "fear up
10 harsh" techniques such as threats against themselves and threats against their
11 families, even though, information and belief, these techniques had been ordered
12 not to be used.

13 99. Plaintiff was subjected to many of these techniques that were illegal under the
14 Geneva Conventions and customary international law.

15 100. On October 10, 2003, the ICRC conducted more than 500 interviews at
16 Guantanamo before meeting with Defendant Miller and his top aides. The ICRC
17 voiced its concerns over the treatment of detainees, particularly with regard to the
18 lack of a legal system for the detainees, the continued use of steel cages, the
19 "excessive use of isolation" and the lack of repatriation for the detainees.

20 Defendant Miller objected to the conclusions and told the ICRC that interrogation
21 techniques were none of their concern.

22 101. Defendant Hood, commander of the Joint Task Force-Guantanamo, had

THE HONORABLE MARSHA J. PECHMAN

1 knowledge of abuse amounting to torture but failed to address it while in a position
2 to do so. In confidential reports to Defendant Hood and other government officials
3 in July 2004, the ICRC charged that the military was intentionally using
4 psychological and physical coercion “tantamount to torture” on prisoners at
5 Guantanamo. Defendant Hood conceded the futility of indefinite and arbitrary
6 detention of detainees at Guantanamo. More than two years after the first
7 prisoners were brought to Guantanamo, Defendant Hood acknowledged that
8 “[t]here are significant numbers of men here, who once their cases are heard will
9 probably be given over to their government or released.” However, Plaintiff
10 remained in detention without charge.

11 102. On July 29, 2004, Defendant England, then Secretary of the Navy and the
12 Designated Civilian Official of detainees, signed a memorandum implementing the
13 CSRT procedures used at Guantanamo. By Defendant England’s own admission,
14 the CSRT procedures were not designed as legal proceedings. The procedures
15 implemented ensured that panels would “rubber-stamp decisions already made
16 rather than applying independent judgment as to whether those decisions were
17 correct,” according to a written statement of Lt. Col. Stephen Abrahams, who
18 served on a CSRT panel in the Office for the Administrative Review of the
19 Detention of Enemy Combatants, presented to the House Armed Services
20 Committee, July 26, 2007. The implementation of the CSRT procedures deprived
21 Plaintiff of due process and condemned him to prolonged arbitrary detention.

22 103. In his role as director of OARDEC, Defendant England appointed Defendant

THE HONORABLE MARSHA J. PECHMAN

1 McGarrah the “convening authority” to review all CSRT decisions, including that
2 Plaintiff be designated an “enemy combatant” and that the case be considered final
3 in a determination signed October 27, 2004. In that capacity Defendant McGarrah
4 presided over the system that deprived Plaintiff of due process, condemned Plaintiff
5 to prolonged arbitrary detention, and exposed him to continued abusive treatment.

6 104. As Joint Detention Operation Group (“JDOG”) Commander at Guantanamo
7 with the responsibility for guarding the detainees and providing security, Defendant
8 Bumgarner played an integral role in implementing torture from April 2005 until
9 March 2006. With his attitude toward detainees being that “we can’t trust them any
10 farther than we can throw them[,]” Defendant Bumgarner attempted to justify the
11 mistreatment of detainees at Guantanamo by demonizing them through various
12 public statements, including “they hate us” and “they will cut your throat in a
13 heartbeat.”

14 105. Defendant Bumgarner demonstrated that he was unwilling and/or unable to
15 bring the detention facility into compliance with the universal standards of humane
16 treatment mandated by the Geneva Conventions of 1949. Defendant Bumgarner
17 tolerated and failed to exercise adequate command responsibility over the
18 treatment of detainees by his officers.

19 106. While responsible for guarding and securing detainees, Defendant Bumgarner
20 was aware, or should have been aware, that torture and cruel, inhuman, or
21 degrading treatment of detainees at Guantanamo was occurring. Defendant
22 Bumgarner ignored the manifest illegality of the treatment he authorized,

THE HONORABLE MARSHA J. PECHMAN

1 implemented, and/or otherwise condoned during his tenure. Plaintiff suffered
2 serious mistreatment and abuse under the tenure of Defendant Bumgarner.

3 107. Defendant Cannon, as commander of the Joint Detention Operation Group
4 failed to exercise sufficient command responsibility in response to incidents of
5 detainee abuse committed at Guantanamo. Defendant Cannon failed to take action
6 to investigate or punish his subordinates for abuses committed against Plaintiff.

7 108. Defendant McNeill, in his role, was, upon information and belief, aware of
8 abuses taking place in Bagram. In fact, an April 2003 memorandum to General
9 Pace noted that Defendant McNeill had specifically endorsed aggressive
10 interrogation techniques that would be illegal under international law. Moreover,
11 upon information and belief, he had been questioned by media about such abuses
12 taking place there. Moreover, he did not give sufficient guidance to his
13 subordinates regarding which interrogation measures were appropriate and which
14 were not. At most, he condoned the abuses taking place there; at the very least, he
15 failed to end them.

16 109. Defendant Gates, during the time he was Secretary of Defense, oversaw the
17 detention of detainees, their treatment, and their interrogation. He affirmatively
18 continued the policies regarding prolonged arbitrary detention of detainees,
19 including Plaintiff, even though he knew, upon information and belief, that there
20 were innocent men being held at Guantanamo Bay, such as Plaintiff. Upon
21 information and belief, he also knew there were significant due process problems in
22 the way the CSRT were operating, but even with this knowledge, he continued

THE HONORABLE MARSHA J. PECHMAN

1 policies to unlawfully detain men at Guantanamo Bay.

2 110. Defendant Gates specifically knew of Plaintiff's complaints and allegations
3 regarding being held unlawfully, because Plaintiff had pending habeas claims
4 against several defendants, which later included Defendant Gates, in federal court
5 in the District of Columbia. (Defendant Gates was substituted as a Defendant as
6 soon as he became Secretary of Defense in December 2006 (see Fed.R.Civ.Pr.
7 25(d)), which was also reflected in the caption in subsequent pleadings.) In fact, as
8 part of their summary judgment motion in September 2006, Plaintiff's habeas
9 counsel submitted a substantial amount of evidence to the court that they had
10 uncovered over the summer which established his innocence and that he was not
11 and never had been a member or supporter of Al Qaeda or the Taliban or
12 associated forces engaged in hostilities against the United States or its allies. This
13 information was part of the court record when Defendant Gates was substituted as
14 a defendant in 2006.

15 111. In February 2007, Defendant Gates appointed Susan J. Crawford as
16 convening authority of the Guantanamo Military Commissions. When she came in
17 as Convening Authority, she publicly stated that "the prosecution was unprepared"
18 to bring cases to trial and that the implementation of such commissions was flawed.
19 Upon information and belief, she reported this to Defendant Gates, putting him on
20 notice of the flawed systems at Guantanamo Bay. Yet, Defendant Gates continued
21 policies to unlawfully detain men held at Guantanamo Bay, including Plaintiff.

22 112. In June 2007, 141 members of Congress sent a letter to then President Bush,

THE HONORABLE MARSHA J. PECHMAN

1 which was copied to Secretary Gates, wherein they indicated that innocent men
2 were being unlawfully held at Guantanamo Bay and that indefinitely holding men at
3 Guantanamo Bay without charging them with a crime was a violation of our
4 country's commitment to the rule of law. They also indicated that they thought it
5 was critical to restore habeas rights to these men, indicating they believed these
6 men had the constitutional right to be free from indefinite detention at the hands of
7 American officials.

8 On October 10, 2007, Morris D. Davis, the Chief Prosecutor for the Office of Military
9 Commissions at Guantanamo Bay, Cuba, resigned in protest, concluding that full
10 and fair trials were not possible, and that the system at Guantanamo Bay had
11 become deeply politicized. Based on the foregoing, it is reasonable to conclude
12 that Defendant Gates knew of these problems and concerns throughout the time he
13 served as Secretary of Defense.

14 **Habeas Petition**

15 113. Mr. Hamad submitted a handwritten petition for a writ of habeas corpus which
16 was officially filed on May 19, 2005. Counsel was finally appointed on October 14,
17 2005, and an amended petition for the writ of habeas corpus was filed by his
18 habeas counsel on December 12, 2005. The habeas process was delayed on
19 numerous occasions due to the acts of the government.

20 114. As a consequence of this and Mr. Hamad's eventual transfer to the Sudan, no
21 court opinion on the merits of Hamad's habeas petition was ever issued. Mr.
22 Hamad's case was consolidated with other former prisoners who asked for the right

THE HONORABLE MARSHA J. PECHMAN

1 to proceed once released or transferred based on the existence of collateral
2 consequences. The consolidated case was dismissed on April 1, 2010 by a federal
3 district judge in the District of Columbia.

4 **V. INJURIES**

5 115. Because of the wrongful acts of Defendants, as set forth above and herein, Mr.
6 Hamad was caused the following injuries, among others:

- 7 a. Ongoing physical injuries;
8 b. Ongoing emotional and psychological injuries;
9 c. Loss of earnings and earning capacity;
10 d. Loss of interfamilial relations;
11 e. Loss of reputation; and
12 f. Medical expenses, past and future.

13 **VI. CLAIMS FOR RELIEF**

14 116. Plaintiff's causes of action arise under and violate domestic and international
15 law, agreements, declarations, conventions, resolutions and treaties, including the
16 following:

- 17 a. Customary international law and treaties of the United States;
18 b. Statutes and common law of the United States;
19 c. Common law of numerous states, including Washington;
20 d. Other applicable laws, domestic, foreign, or international.

21 **VII. FIRST CLAIM FOR RELIEF**

22 **Prolonged Arbitrary Detention as a Violation of Customary International Law
and the Geneva Conventions under the ATS and State Common Law, Brought
Against All Defendants in Their Individual**

THE HONORABLE MARSHA J. PECHMAN

Capacities

117. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

118. The acts described herein constitute prolonged arbitrary detention of Mr. Hamad in violation of customary international law and the Geneva Conventions, Common Article III, and are actionable under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated both customary international law and Common Article III prohibiting prolonged arbitrary detention as reflected, expressed, and defined in multilateral treaties and other international treaties, domestic and international judicial decisions, and other authorities.

119. All Defendants are liable for said conduct in that they, acting under color of law, committed, directed, ordered, confirmed, ratified, had command responsibility for, aided and abetted, conspired to, and/or directly or indirectly participated in bringing about the prolonged arbitrary detention of Mr. Hamad. Defendants intended and/or knew or should have known, that prolonged arbitrary detention was being enforced by their subordinates and failed to prevent those abuses or punish those responsible.

120. All Defendants practiced, encouraged, and/or condoned prolonged arbitrary detention of Mr. Hamad for over five years until he was released.

121. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered physical harm, emotional harm, and financial loss.

THE HONORABLE MARSHA J. PECHMAN

VIII. SECOND CLAIM FOR RELIEF

Cruel, Inhuman, or Degrading Treatment as a Violation of Customary International Law and the Geneva Conventions under the ATS and State Common Law, Brought Against Certain Defendants in Their Individual Capacities

122. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

123. The acts described herein constitute cruel, inhuman, or degrading treatment of Mr. Hamad in violation of customary international law and Common Article III of the Geneva Conventions and are actionable under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated both customary international law and Article III prohibiting cruel, inhuman, or degrading treatment as reflected, expressed, and defined in multilateral treaties and other international treaties, domestic and international judicial decisions, and other authorities.

124. Defendants Gates, Rumsfeld, Myers, Pace, Mullen, Hill, Craddock, Miller, Hood, Harris, Buzby, McQueen, Cannon, Bumgarner, Dennis, Vargo, Rodriguez, McNeill, Ihde, and Does 3-100 are liable for said conduct in that they, under color of law, directed, ordered, confirmed, ratified, had command responsibility for, aided and abetted, conspired to, and/or directly or indirectly participated in bringing about the cruel, inhuman, or degrading treatment of Mr. Hamad. Defendants intended and/or knew or should have known, that cruel, inhuman, or degrading treatment was being enforced by their subordinates and failed to prevent those abuses or punish those responsible.

THE HONORABLE MARSHA J. PECHMAN

1 125. Defendants Gates, Rumsfeld, Myers, Pace, Mullen, Hill, Craddock, Miller,
2 Hood, Harris, Buzby, McQueen, Cannon, Bumgarner, Dennis, Vargo, Rodriguez,
3 McNeill, Ihde, and Does 3-100 practiced, encouraged, and/or condoned cruel,
4 inhuman, or degrading treatment of Mr. Hamad for over five years until he was
5 released.

6 126. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered
7 physical harm, emotional harm, and financial loss.

8 **IX. THIRD CLAIM FOR RELIEF**

9 **Torture as a violation of Customary International Law and the Geneva**
10 **Conventions under the ATS and State Common Law, Brought Against Certain**
11 **Defendants in Their Individual Capacities**

12 127. Plaintiff repeats and re-alleges the allegations contained in the preceding
13 paragraphs of this Complaint as if fully set forth herein.

14 128. The acts described herein constitute torture of Mr. Hamad in violation of
15 customary international law and Common Article III of the Geneva Conventions and
16 are actionable under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts
17 violated both customary international law and Common Article III prohibition against
18 torture as reflected, expressed, and defined in multilateral treaties and other
19 international treaties, domestic and international judicial decisions, and other
20 authorities.

21 129. Defendants Gates, Rumsfeld, Myers, Pace, Mullen, Hill, Craddock, Miller,
22 Hood, Harris, Buzby, McQueen, Cannon, Bumgarner, Dennis, Vargo, Rodriguez,
McNeill, Ihde, and Does 3-100 are liable for said conduct in that they, under color of

THE HONORABLE MARSHA J. PECHMAN

1 law, committed, directed, ordered, confirmed, ratified, had command responsibility
2 for, aided and abetted, conspired to, and/or directly or indirectly participated in
3 bringing about the torture of Mr. Hamad. Defendants intended and/or knew or
4 should have known, that torture was being enforced by their subordinates and failed
5 to prevent those abuses or punish those responsible.

6 130. Defendants Gates, Rumsfeld, Myers, Pace, Mullen, Hill, Craddock, Miller,
7 Hood, Harris, Buzby, McQueen, Cannon, Bumgarner, Dennis, Vargo, Rodriguez,
8 McNeill and Ihde, Does 3-100 practiced, encouraged, and/or condoned torture of
9 Mr. Hamad.

10 131. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered
11 physical harm, emotional harm, and financial loss.

12 **X. FOURTH CLAIM FOR RELIEF**

13 **Targeting of a Civilian as a Violation of Customary International Law and the**
14 **Geneva Conventions under the ATS and State Common Law, Brought Against**
All Defendants in Their Individual Capacities

15 132. Plaintiff repeats and re-alleges the allegations contained in the preceding
16 paragraphs of this Complaint as if fully set forth herein.

17 133. The acts described herein constitute war crimes as acts against a private
18 civilian, in violation of the Fourth Geneva Convention and Customary International
19 Law, which strictly prohibit intentional acts upon a civilian.

20 134. All Defendants are liable for said conduct in that they, acting under color of law,
21 committed, directed, ordered, confirmed, ratified, had command responsibility for,
22 aided and abetted, conspired to, and/or directly or indirectly participated in the

THE HONORABLE MARSHA J. PECHMAN

1 bringing about the war crimes as acts against Mr. Hamad, a private civilian.

2 135. All Defendants intended and/or knew or should have known, that war crimes
3 were being committed and enforced by their subordinates and failed to prevent
4 those abuses or punish those responsible. In accordance with the Army Field
5 Manual, military commanders may be responsible for war crimes committed by
6 subordinate members of the armed forces, as in the instant case.

7 136. All Defendants practiced, encouraged, and/or condoned war crimes against
8 Mr. Hamad for over five years until he was finally released, by targeting him as a
9 civilian who was never actively engaged in combat or directly supported hostilities.

10 137. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered
11 physical harm, emotional harm, and financial loss.

12 **XI. FIFTH CLAIM FOR RELIEF**

13 **Violation of Due Process as a Violation of Customary International Law under the**
14 **ATS and State Common Law, Brought Against all Defendants in Their Individual**
15 **Capacities**

16 138. Plaintiff repeats and re-alleges the allegations contained in the preceding
17 paragraphs of this Complaint as if fully set forth herein.

18 139. The acts described herein constitute violations of the life and liberty interests of
19 Mr. Hamad in violation of the laws of nations and are actionable under the Alien
20 Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law
21 requiring due process as reflected, expressed, and defined in multilateral treaties
22 and other international treaties, domestic and international judicial decisions, and
other authorities.

THE HONORABLE MARSHA J. PECHMAN

1 140. All Defendants are liable for said conduct in that they, acting under color of law,
2 committed, directed, ordered, confirmed, ratified, had command responsibility for,
3 aided and abetted, conspired to, and/or directly or indirectly participated in bringing
4 about violations of due process of Mr. Hamad. Defendants intended and/or knew or
5 should have known, that due process violations were being enforced by their
6 subordinates and failed to prevent those abuses or punish those responsible.

7 141. All Defendants practiced, encouraged, and/or condoned due process violations
8 of Mr. Hamad for over five years until he was released. Mr. Hamad was detained
9 for more than two years before his status was reviewed by a flawed CSRT.

10 142. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered
11 physical harm, emotional harm, and financial loss.

12 **XII. SIXTH CLAIM FOR RELIEF**

13 **Forced Disappearance, as a Violation of Customary International Law under**
14 **the ATS and State Common Law, Brought Against Certain Defendants in Their**
15 **Individual Capacities**

16 143. Plaintiff repeats and re-alleges the allegations contained in the preceding
17 paragraphs of this Complaint as if fully set forth herein.

18 144. The acts described herein constitute the forced disappearance of Mr. Hamad in
19 violation of the law of nations and are actionable under the Alien Tort Statute, 28
20 U.S.C. § 1350, in that the acts violated customary international law prohibiting
21 forced disappearance as reflected, expressed, and defined in multilateral treaties
22 and other international treaties, domestic and international judicial decisions, and
other authorities.

THE HONORABLE MARSHA J. PECHMAN

1 145. Defendants Rumsfeld, Myers, McNeill, Ihde, and Does 3-100 are liable for said
2 conduct in that they, acting under color of law, committed, directed, ordered,
3 confirmed, ratified, had command responsibility for, aided and abetted, conspired
4 to, and/or directly or indirectly participated in the forced disappearance of Mr.
5 Hamad.

6 146. Defendants Rumsfeld, Myers, McNeill, Ihde, and Does 3-100 intended and/or
7 knew or should have known, that Mr. Hamad's disappearance was forced by their
8 subordinates and failed to prevent those abuses or punish those responsible.

9 147. Defendants Rumsfeld, Myers, McNeill, Ihde, and Does 3-100 practiced,
10 encouraged, and/or condoned the forced disappearance of Mr. Hamad for eight
11 months until he was finally allowed to write a letter to his wife in March of 2003.

12 148. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered
13 physical harm, emotional harm, and financial loss.

14 **XIII. SEVENTH CLAIM FOR RELIEF**

15 **United States Constitution, Fifth Amendment: Violation of Due Process,**
16 **against Certain Defendants in Their Individual Capacities**

17 149. Plaintiff repeats and re-alleges the allegations contained in the preceding
18 paragraphs of this Complaint as if fully set forth herein.

19 150. The acts described herein constitute violations of the life and liberty interests of
20 Mr. Hamad in violation of the Fifth Amendment of the United States Constitution,
21 which prohibits cruel and inhumane treatment constituting punishment.

22 151. Defendants Gates, Rumsfeld, Wolfowitz, England, McGarrah, Myers, Pace,

THE HONORABLE MARSHA J. PECHMAN

1 Mullen, Hill, Craddock, Miller, McNeill, Hood, Harris, Buzby, McQueen, Cannon,
2 Bumgarner, Dennis, Vargo, Rodriguez, and Does 1 and 2 are liable for said conduct
3 in that they, acting under color of law, committed, directed, ordered, confirmed,
4 ratified, had command responsibility for, aided and abetted, conspired to, and/or
5 directly or indirectly participated in the bringing about of due process violations of
6 Mr. Hamad.

7 152. Defendants Gates, Rumsfeld, Wolfowitz, England, McGarrah, Myers, Pace,
8 Mullen, Hill, Craddock, Miller, McNeill, Hood, Harris, Buzby, McQueen, Cannon,
9 Bumgarner, Dennis, Vargo, Rodriguez, and Does 1 and 2 intended and/or knew or
10 should have known, that due process violations were being enforced by their
11 subordinates and failed to prevent those abuses or punish those responsible.

12 153. Defendants Gates, Rumsfeld, Wolfowitz, England, McGarrah, Myers, Pace,
13 Mullen, Hill, Craddock, Miller, McNeill, Hood, Harris, Buzby, McQueen, Cannon,
14 Bumgarner, Dennis, Vargo, Rodriguez, and Does 1, 2, and 3-100 practiced,
15 encouraged, and/or condoned due process violations of Mr. Hamad for over five
16 years until he was finally released.

17 154. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered
18 physical harm, emotional harm, and financial loss.

19 **XIV. PRAYER FOR RELIEF**

20 WHEREFORE Plaintiff respectfully requests the Court enter a judgment against
21 Defendants:

22 155. Awarding compensatory damages in an amount that is fair, just, and

THE HONORABLE MARSHA J. PECHMAN

reasonable in an amount to be proven at trial;

156. Awarding exemplary and punitive damages;

157. Awarding reasonable attorneys' fees and costs of suit;

158. Ordering such further relief as the Court may deem just and proper.

DATED this 6th day of January, 2012

WILLAMETTE UNIVERSITY SCHOOL OF LAW
INTERNATIONAL HUMAN RIGHTS CLINIC

/s/ GWYNNE L. SKINNER

Gwynne L. Skinner, OSB No. 022235
Attorney for Plaintiff

PUBLIC INTEREST LAW GROUP, PLLC
705 Second Avenue, Suite 1000
Seattle, WA 98104
(206) 838-1800

/s/ Nancy S. Chupp

Hank Balson, WSBA No. 29250
Nancy S. Chupp, WSBA No. 33740
Attorneys for Plaintiff

THE HONORABLE MARSHA J. PECHMAN

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of this filing, and a copy of the Second Amended Complaint, to:

Paul E. Werner
Trial Attorney
United States Department of Justice
Torts Branch, Civil Division
P.O. Box 7146
Ben Franklin Station
Washington, D.C. 20044

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/S/ GWYNNE L. SKINNER

Gwynne L. Skinner, OSB No. 022235
Attorney for Plaintiff